IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VISHAL DHAGAT

&

HON'BLE SMT. JUSTICE ANURADHA SHUKLA

ON THE 25th OF SEPTEMBER, 2025

FIRST APPEAL No. 930 of 2024

[redacted]

Versus

[redacted]

Appearance:

Shri Ajay Kumar Ojha - Advocate for appellant.

Shri Vaibhav Tiwari - Advocate for respondent.

JUDGMENT

Per. Justice Anuradha Shukla

Appellant/husband is aggrieved of the judgment and decree dated 30.04.2024 passed in Regular Civil Suit No.1021/2021 by Additional Judge to the Court of Principal Judge, Bhopal whereby his divorce petition was dismissed and a lesser relief of a decree of judicial separation was allowed.

2. Facts admitted between the parties are that they were married on 08.12.2002 and a daughter was born to them in the year 2007. Admittedly, they are living separately since 2019. It is admitted that they lived together in Bengaluru and came to Bhopal in 2018. It is admitted that appellant/husband is working in a Multi National Company and the properties acquired during the period of marriage were registered in the joint name of the parties. It is also not disputed that they had a joint locker in

HDFC Bank and also that appellant had been to Manila, Philippines in the year 2019. It is also not denied by wife that during her husband's visit to Manila she came Bhopal along with daughter and then went to Chennai. Admittedly, a complaint was lodged by her in *Mahila Thana*, *Madipakkam*, Madras and when a counselling session was arranged on 29.02.2020 she failed to show up. It is also not denied that petitions under Section 125 Cr.P.C., Section 9 of Hindu Marriage Act and Section 12 of Protection of Women from Domestic Violence Act, 2005 (for short 'the Act of 2005') have been filed by the wife.

3. The divorce petition in brief is that, since the marriage, the parents of wife had too much interference in the married life of the parties. To help the respondent/wife in her studies, the husband got her admission in a coaching institute at Bhopal where his parents were residing but during her stay at Bhopal she resided for some time in a place not known to husband. He also ensured her treatment for conceiving the child and after the birth of child, when mother of husband visited them at Bengaluru, behaviour of wife towards her was very repulsive and insulting. Respondent/wife was not very caring even for the child and this resulted in deterioration of child's health. Appellant/husband had to visit foreign countries and respondent/wife was completely negligent towards her house hold and motherhood commitments. She used to spend huge money on living a lavish life as she was enjoying financial freedom through credit card facilities provided by husband and became outrageous when questioned about it. The emotions and bonding between the parties started dying down and respondent/wife

grew more and more aggressive and insulting towards husband and his relatives. She even withdrew jewellery items worth Rs.50,00,000/- from the joint locker without informing the husband. She started casting doubts abut his moral character and also about his ability to earn money and sustain the family. Allegations of this nature were even made in her petition filed under Section 125 Cr.P.C.. When appellant was still in Manila, respondent/wife went to Chennai along with daughter to give a new start to her life but informed nothing about it to the husband. She also obtained the T.C. of her daughter from the Bhopal School and is living separately since then. She also got a false report registered in *Mahila Thana*, Chennai, but did not arrive for counselling session. It appears that respondent/wife is not keen to resume matrimonial ties and is also not ready for divorce with consent, therefore, a request has been made in the petition under Section 13 of Hindu Marriage Act to allow divorce on the grounds of cruelty and desertion.

4. Denying aforesaid allegations respondent/wife has claimed that she was always keen to resume the marital ties and only with that object she had filed a petition under Section 9 of the Hindu Marriage Act. Several attempts were made by her through visiting the matrimonial house but she was denied entry by appellant/husband. The counselling session in Chennai was unsuccessful as appellant/husband did not reach there in time and after waiting for the whole day, respondent/wife was compelled to leave as she did not have any arrangements for staying overnight and had to come back to Bhopal. Appellant/husband is not keen to return the *Stridhan* of respondent/wife and for this reason, the joint locker was operated many times in the absence of

respondent/wife. It is also denied that the properties which are in joint names of parties, are of the sole ownership of appellant/husband. A request has, therefore, been made to dismiss the divorce petition.

5. The trial Court after framing the issues recording the evidence given by both the sides passed the impugned judgment.

6. The appellant/husband has challenged said judgment and decree on the grounds that the learned trial Court without application of mind to the facts and the circumstances of the case and adopting a very hyper-technical view rejected the prayer of divorce and instead passed a decree of judicial separation. It had given a finding of cruelty in favour of appellant/husband and the only recourse available thereafter was to pass a decree of divorce. The oral and documentary evidence was not examined in correct perspective and, therefore, the impugned judgment and decree being illegal deserve to be set aside replacing them with a decree of divorce.

6(A). Respondent/wife has filed an application under Order 41 Rule 22 CPC challenging the impugned judgment and decree through cross-objection. Her request is to set aside the decree of judicial separation as she is vying for restoration of marital ties.

7. Learned counsel for both the sides have been heard on merits and the record of the trial Court has been perused.

8. In depth analysis of impugned judgment reveals that trial Court though made an observation that both the parties dealt cruelly against each other, but in para-26 it decided not to give any conclusive finding on the issue of cruelty committed by appellant/husband and restricted its finding only to the

fact that respondent/wife was cruel with appellant/husband. This conclusive finding is challenged under the cross-objection filed by wife. Appellant/husband had raised the ground of desertion by claiming that he was deserted by wife since 04.02.2019 but the impugned judgment reflects that the trial Court was not convinced with the aforesaid date of desertion, as for it parties continued their relationship in 2020-2021 and even thereafter and, thus, minimum two years period of desertion was not complete when the divorce petition was filed in the year 2021.

9. The trial Court after appreciating the evidence was convinced with the fact that behaviour of wife towards husband was cruel and placing reliance on this finding, husband is requesting for a decree of divorce. It is respondent/wife, who is aggrieved of this finding and has challenged it in her cross-objection. The ground raised about cruelty had multiple facets: insulting and intimidating behaviour of wife towards husband and his mother, neglect of house hold tasks, misusing the financial liberty, living a luxurious life and spending most of the time in kitty parties and also casting aspersions on the moral character of appellant/husband by claiming his physical and illicit relationship with other women. From the analysis of oral testimony, we are sure that it is difficult to arrive on any etching finding that behaviour of wife towards husband and his mother was un-becoming and offensive, or had a habit of squandering money to the extent of constituting cruelty for the husband. This view is based upon the reason that whatever has been stated by appellant/husband on oath in said context, has been correspondingly denied by wife on oath in her testimony and no other

witness has been examined by either parties to seek corroboration to their respective statements on this issue. After balancing the oral evidence led by rival parties, we arrive at the conclusion that cruelty through misbehaviour or any insulting attitude, or by squandering the money or misusing the financial access to the husband's bank account has not been proved.

10. The other aspect of cruelty relates to aspersions cast about the immoral character of appellant/husband and for this aspect we do not have to check merely the oral testimony of the parties as these allegations have documentation and were prominently made in Exs.-P/13 and P/14 which are the petitions filed by respondent/wife under Section 125 of Cr.P.C. and under Section 12 of the Act of 2005. It is claimed in cross-objection that wife initiated the proceeding of Section 12 of the Act of 2005 in anger but this explanation would not absolve her of the liability incurred by making baseless allegations against husband regarding his moral character. In both the said petitions (Exs.-P/13 and P/14) respondent/wife has categorically stated that husband is in illicit relationship with many women and that he is in the habit of engaging in vulgar chats through laptop and mobile with these women once he returns to India. Taking up this task of tarnishing the image of husband a step further, it has been claimed by wife in her statements before the trial Court that she had clicked some photographs regarding vulgar chatting of her husband, his intimacy with other women and also of carrying condoms on his solo foreign visits. The documents relating to chatting and photographs were not considered as admissible evidence by trial Court and we do not find any reason to differ with that finding as the

alleged chatting marked as Ex.-D/3 are photo copies produced in evidence without any certificate about the sources and the process through which they were generated. Photographs showing condom lying over a bag do not connect with appellant/husband nor establish any fact regarding his alleged sin. Even the other photographs do not have any vulgar contents or show any intimate relationship.

11. From the aforesaid discussion, it is established that respondent/wife was making very serious allegations about the illicit relationship of appellant/husband and she has hopelessly failed in establishing any grain of truth in those allegations. Making baseless and false allegations of the nature of moral turpitude not only cause mental agony to the other party of marriage but it brings the marital relationship to its doom. We accede that if allegations were true then nothing should have been spared by wife to establish what was being claimed by her repeatedly or we may say that the burden to prove these grave allegations was heavily on her. As nothing worth credence has been proved by her, we find no exaggeration in the compliant of husband that he has suffered great agony on account of these allegations and has therefore been subjected to cruelty.

12. In **Chanderkala Trivedi (Smt.) Vs. Dr. S.P. Trivedi, (1993) 4 SCC 232** , the Hon'ble Apex Court considered the serious allegations made by a party against the other and it observed that it was obvious that the marriage of the two could not be continued in these circumstances any further. Even in the case of **V. Bhagat Vs. D. Bhagat (Smt.), (1994) 1 SCC 337** , the Court observed that in spite of making various allegations against husband and his

family about being insane, the desire of wife to live with him was only a resolution to make the life of husband further miserable and this attitude was considered as cruelty.

13. In view of the forgoing analysis, we are hold that trial Court committed no wrong in holding that behaviour of wife was cruel towards husband and we also come to the conclusion that no immoral character of husband was proved by wife despite making allegations. We are aware that relationship between the parties had gone so bitter that neither of them was having any empathy for the other, but even this kind of relationship cannot be an excuse to make false allegations regarding the moral character of the other party. Thus, on this ground of cruelty, husband deserves a decree of divorce and there is no reasoned justification in the impugned judgment for not allowing the decree of divorcee despite holding that husband was being subjected to cruelty.

14. The other ground raised by husband was about desertion. The trial Court was impressed by the fact that though husband was claiming separation since 2019 but wife has proved through evidence that in the year 2022-23 she was with the husband and had even used the credit card until July, 2022 which was issued against the bank account of husband. Her cross-examination reveals that though there was no physical relationship between the parties since 2019 yet they were meeting frequently and enjoying the family time with their daughter. This behaviour of the parties is not in coherence with any intention to permanently withdraw from the company of other spouse. The trial Court was therefore justified in

dismissing the divorce petition on the ground of desertion.

15. In the result, the appeal filed by appellant/husband is **allowed** on the ground of cruelty and the cross-objection filed by respondent/wife is dismissed. Consequently, the marriage solemnized between the parties on 08.12.2002 is declared to be dissolved on the ground of cruelty.

16. Registry is directed to draw the decree in accordance of aforesaid observations.

(VISHAL DHAGAT)
JUDGE

(ANURADHA SHUKLA)
JUDGE

sjk